

## REMARKS

### **Remarks About the Information Disclosure Statements:**

The Examiner has questioned the relevance of certain documents submitted in an Information Disclosure Statement on February 13, 2005. Applicants clarified this issue in a First Supplemental Information Disclosure Statement mailed May 11, 2005 by noting that they had submitted references B2-B10, which had similar designations to but were not duplicative of references A130-A138. The references B2-B10 were intended to replace the references A130-A138. Applicants note that the Examiner initialed the Form PTO-1449 filed with the First Supplemental IDS for references B8-B10 relative to the three Japanese references noted in the present Office Action. Applicants further note that WO 02/057156 is directed to a packaging component.

Applicants also note for the Examiner's attention that Applicants mailed a Second Supplemental Information Disclosure Statement on August 16, 2005, which date is after the Examiner mailed the outstanding Office Action. Applicants respectfully request that the Examiner consider the references cited in the Second Supplemental Information Disclosure Statement and initial the Form PTO-1449 associated therewith. Applicants note that the date of the International Search Report (C5) cited in the Second Supplemental Information Disclosure Statement was dated June 3, 2005, rather than June 3, 2004 as reported in the Form PTO-1449. Applicants apologize for any confusion this error may have caused.

### **Remarks About The Drawing Objections:**

The Examiner has objected to various aspects of the drawings. In particular, Applicants have (1) used reference numbers 78 and 130 to designate different components in FIGS. 2 and 4<sup>1</sup> and FIGS. 12 and 13 respectively, and (2) used reference numbers 130, 132 and 134 in FIG. 13 without mentioning them in the

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<sup>1</sup> Applicants believe the Examiner meant to refer to Figure 4, rather than Figure 3, in the Office Action at page 2, para. 2.

specification. In response, Applicants have (1) deleted reference number 78 from FIG. 2, (2) changed reference numbers 130 and 134 to reference numbers 110 and 112 respectively in FIG. 13 and (3) deleted reference number 132 from FIG. 13. In addition, Applicants have amended the specification at page 15, line 17 by substituting reference number 110 for reference number 13. Accordingly, all of the Examiner's objections have been overcome and notice to that effect is earnestly solicited.

**Remarks About the Rejections Under 35 USC 112(2):**

The Examiner has rejected claim 9 as being indefinite on the basis of the meaning of the term "maximum" in connection the recitation of "first and second values" (Office Action at 3-4).<sup>2</sup> Applicants submit that the use of the terms "maximum" and "value" are clear and definite. As noted by the Examiner, colors can have different or similar hues, saturation and/or luminosity (value), or combinations thereof (see, e.g., Specification at 13, lines 20-26; at 14, lines 20-26).

As defined by Applicant in the specification, the term "value" is equated with "luminosity" (see, e.g., Specification at 14, line 31 ("Value (luminosity)"); at 15, lines 1-6, 20-22). With respect to value (luminosity), Applicants defined "maximum" as the "Polaroid white reference standard," with a "value of one equat[ing] to white" (Specification at 15, lines 2-3). For all of these reasons, claim 9 is clear and definite, and the Examiner's rejection should be withdrawn.

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<sup>2</sup> Applicants are unclear as to the meaning of the statement that there is "insufficient antecedent basis for 'maximum' in the claim." That recitation in claim 9 is the first time that "maximum" is cited, and Applicants submit that no additional term, such as "a," is required to precede that term. Since the Examiner did not reject claim 10, which also refers to "maximum," under 35 USC 112(2) on that basis, Applicants have not further addressed this point. If Applicants have misunderstood the rejection, they hereby request clarification.

**Remarks About the Prior Art Rejections:**

The Examiner has rejected all of the pending claims as being anticipated by or made obvious over PCT publication WO 02/07665 A1 to Costea, alone and in combination with U.S. Patent No. 6,293,932 to Balzar. Applicants note that the Examiner has rejected independent claims 1 and 18 under 35 USC 102(b) as being anticipated by Costea, meaning that Costea must disclose every limitation of those claims. Applicants respectfully submit that Costea fails to disclose all of the limitations of those claims and that the Examiner's rejections must therefore be withdrawn.

**Claims 1-17:**

With respect to claim 1, Costea does not disclose or suggest, expressly or inherently, that the packaging component has *different* first and second visual characteristics that are present on the *same or a single* product component, as recited in claim 1. Rather, Costea discloses that the package may include one type of absorbent article present "in at least two different colors," e.g., a first article having a first color and a second article having a second color, or different types of absorbent articles presented in at least two different colors (Costea at 3, lines 13-21; at 7, lines 8-17). Costea further discloses that the packaging component may be configured with different means, each of them indicating "*one color*" of the different colored absorbent articles contained in the package (Costea at 11, lines 11-19). Nowhere does Costea disclose that the *packaging* includes two different colors as used on a *single* product component, and as just noted *expressly* teaches away therefrom.

Therefore, while Costea may disclose that a single *product* may have two different colors (Costea at 27, line 28 to 28, line 11), that is irrelevant to whether the packaging has those same two colors. Indeed, as just noted, Costea expressly states that the packaging includes only *one* color from any particular product. Indeed, to include multiple colors from a single product may mislead the consumer to believe that the packaging contains different articles presented in those colors, contrary to the

entire purpose and premise of Costea.

The Examiner also cannot speculate or argue that the window(s) of the packaging will make visible the two colors of the article, thereby providing the first and second visual characteristics of the packaging component. First, there is no disclosure that two colors of a *single* product would be visible through the window, and such a disclosure is not inherent as it does not necessarily happen every time. Second, a clear window on the packaging component does not constitute the packaging component having first and second visual characteristics, but rather merely makes the first and second visual characteristics of the product component visible to the user through the packaging.

For all of these reasons, the Examiner's rejection of claim 1, and claims 2-17 depending therefrom, should be withdrawn.

### **Claims 18-22:**

Independent claim 18 recites "a first packaging component having at least first and second visual characteristics, wherein said product component is disposed in said first packaging component; and a second packaging component having said at least said first and second visual characteristics, wherein said first packaging component is disposed in said second packaging component."

While Costea discloses that the absorbent articles can be packaged directly within the package as described therein, or may "be individually folded and wrapped within a pouch" (Costea at 9, lines 2-4), there is absolutely no disclosure or suggestion that such a pouch has more than one visual characteristic. Accordingly, Costea fails to disclose all of the recitations of Claim 18, and the Examiner's rejection should be withdrawn on this basis alone.

Moreover, even if Costea were to disclose that the individual package had more than one visual characteristic, which Applicants dispute, there is absolutely no disclosure or suggestion that a second, outer packaging component would be configured with the same first and second visual characteristics for at least the same

reasons set forth above with respect to claim 1. Indeed, there is no disclosure in Costea that the outer packaging component has even a single common visual characteristic with an individual pouch, let along two such characteristics.

For all of these reasons, the Examiner's rejection of claim 18, and claims 19-22 depending therefrom, also should be withdrawn.

**Remarks About the Provisional Double Patenting Rejection:**

The Examiner has provisionally rejected claims 1-3, 5-10, 12, 16 and 17 under the judicially created doctrine of obviousness-type double patenting relative to claims 8-18, 23 and 25 of co-pending Application No. 11/025,645. Applicants note that neither case is presently indicated to be in condition for allowance, and that the present case may advance to allowance and issuance first. Accordingly, without addressing the merits of the noted rejection, Applicants do not believe any further action is required at this time (MPEP 804).

**Conclusion:**

If for any reason this application is not considered to be in condition for allowance and an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to call the undersigned attorney at (312) 321-4713.

Respectfully Submitted,

Dated: October 27, 2005

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**IN THE DRAWINGS:**

Please enter the attached drawing amendment. In particular, Applicants have removed reference number “78” from Figure 2, substituted reference numbers -- 110 -- and -- 112 -- for reference numbers “130” and “134” respectively in Figure 13, and removed reference number “132” from Figure 13.